I assess the amount of loss suffered by the finance company in the sum of $824.10. To that figure must be added the sum of $210 which represents two months' arrears of instalments, thereby making a total of $1,034.10. I cannot follow how the learned president had arrived at the sum of $414.10 as representing actual loss. The sum of $1,034.10 is made up as follows:—

Cash price of the car		$5,800.00
Extras		409.10
Hire Purchase Charge		520.00
		$6,729.10
Less the following items:—		
Option money paid	$1,000	
One instalment paid	105	
Resale of car	4,800	5,905.00
		824.10
Add two instalments due (at $105 p.m.)		210.00
Actual loss		$1,034.10

I have considered the question of allowance or discount for the accelerated receipt by the finance company of $4,800 on the resale of the car. The hire-purchase charges or interests of $520 are for a period of two years. Three months had lapsed before they retook possession of the vehicle. The hire-purchase charges on the remainder of the hire period would be twenty-one months and that would amount to $455 ($\frac{\$520}{24} \times 21$). It is only fair that the appellant be allowed a deduction of this amount. In the circumstances, I would dismiss the appeal with costs, set aside the sum of $414.10 as awarded by the learned president and substitute a sum of $579.10 ($1,034.10 minus $455) as damages to the finance company.

Appeal dismissed.

Solicitors: *Oorjitham & Lam; Shearn, Delamore & Co.*

ABDUL KARIM v. MOHAMED TAIB & ANOR.

[O.C.J. (Syed Othman J.) March 27, 1969]
[Kuantan — Election Petition No. 1 of 1968]

Election — Nomination — Objection to, on ground of candidate's failure to insert name in prescribed consent form — Whether such omission invalidated nomination — Power of court to review returning officer's decision — Elections (Conduct of Elections) Regulations, 1959 — Election Offences Ordinance, 1954, s. 32(b).

The petitioner and the 1st respondent filed their nomination papers to contest in the Parliamentary election for the Kuantan constituency. The nomination papers were in the forms prescribed in the First Schedule to the Elections (Conduct of Elections) Regulations, 1959. At the close of the nomination, the 1st respondent objected to the petitioner's nomination on the ground that he had failed to insert his name in the attestation clause of Form 3 of the said Regulations. The objection was upheld by the 2nd defendant, the returning officer, and the petitioner's nomination was held to be invalid for non compliance with the Regulations. The first respondent was returned unopposed. The petition sought a declaration under section 32(b) of the Election Offences Ordinance, 1954 that the election of the 1st respondent was void.

Held, allowing the petition: (1) the returning officer's decision was open to review by the court as the matter came within the ambit of the wordings of section 32(b) of the Election Offences Ordinance;

(2) the petitioner's omission to insert his name in the attestation clause of Form 3 of the said Regulations did not invalilate his nomination. An omission should not be regarded as a non-compliance with the Regulations unless it amounts to a misnomer or an inaccurate description within the meaning of regulation 28 of the said Regulations or unless it affects the substance or is calculated to mislead.

ELECTION PETITION.

V. Verappan for the petitioner.

Ten Chin Yong for the 1st respondent.

Abdullah bin Ghazali (Sr. Federal Counsel) for the 2nd respondent.

Cur. Adv. Vult.

Syed Othman J.: On the 11th November, 1968, a Parliamentary election was held for the Kuantan constituency. The first respondent and the petitioner were the only candidates. A nomination paper in the prescribed form nominating the petitioner as a candidate for the election was delivered in due time to the second respondent who was the returning officer for the election. The nomination was subscribed by a proposer and a seconder and by eight other electors as assenting to the nomination. The petitioner signified his consent in the portion of the form prescribed for the purpose at page 2. This portion reads as follows:—

"I, ABDUL KARIM BIN HUSSAIN nominated in the foregoing nomination paper hereby consent to such nomination as candidate for election as a member of the Dewan Ra'ayat for the Constituency of KUANTAN and name as my address for service of process and papers:

Address: B-664, Galing Besar, Kuantan, Pahang.

I wish to be described on the ballot paper as KARIM.

My Identity Card Number is PA. 000357 (2505485).

Witness my hand this 11th day of November, 1968.

Signed by the said nominee.....

in the presence of: Sd. Abdul Karim bin Hussain
Sd. (illegible) *Signature of Candidate*

Signature of Witness

Address of Witness:
235, Kampong Bharu Tanah Puteh,
Kuantan, Pahang."

At the close of the nomination the first respondent and another person objected to the petitioner's nomination on the ground that the nomination paper did not comply with the provisions of the election regulations, namely the nominee's name did not appear in the nomination paper at page 2. The second respondent upheld the objection and the first respondent was returned as having been elected. Later the second respondent gave his reasons for his decision as follows:—

"In the nomination form of the candidate for Abdul Karim bin Hussain in column 'Signed by the said nominee . . . .' had not been filled up.

The form used was Form 3 in Elections (Conduct of Elections) Regulations, 1959, and according to rule 4(2) in the said Regulations written consent of the candidate must be endorsed on each nomination paper as set out in Form 3 to the said Regulations and to confirm that the form was signed by him before a witness.

As that column had not been filled up with the name of the candidate, the nomination paper of the candidate had not been correctly and completely filled up as required in the Regulations in Elections (Conduct of Elections) Regulations, 1959."

The petitioner now seeks that it be determined that the first respondent was not duly elected or ought to have been returned without a poll being taken and that the election was void.

In passing I might observe that one of the objectors was the first respondent, a candidate himself. *Schofield* in "Parliamentary Elections" (3rd edition) at page 211 has the following to say:—

"It is somewhat invidious for a candidate himself to do the objecting, therefore this duty will fall to the lot of the election agent who should make it his business to be familiar with every ground for objection and the time at which an objection should be made."

The question for determination of the court is whether the returning officer was correct at law in his decision, to put it briefly, that failure to insert the name of the candidate in the attestation clause of the nomination paper is a non-compliance with the provisions of the regulations rendering the nomination invalid.

Objections to a nomination paper may be made only on all or any of the grounds specified in regulation 7(1) of the Elections (Conduct of Elections) Regulations, 1959 (hereinafter called the Regulations). The specific ground of objection in this case was under paragraph (b) of regulation 7(1) which reads (quoting what is relevant to this petition) "that the nomination paper does not comply with . . . . the provisions of these Regulations."

In relation to the election of a member to the Dewan Ra'ayat, one of the main requirements of regulation 4 of the Regulations is that the written consent of the candidate must be endorsed on each nomination paper which shall be as set out in Form 3 in the First Schedule to the Regulations.

In dealing with the argument of counsel I need only set forth the salient points.

Learned counsel for the petitioner has urged that as there is no express provision in the Regulations requiring attestation of a candidate's signature, the insertion of his name in the attestation clause is unnecessary.

I need only point out that Form 3 is part of the Regulations. It clearly indicates that there should be attestation of the signature of the candidate consenting to nomination. In any case I do not think the point is vital to the consideration of the petition, as there was attestation, the form of which is the subject of this petition.

It is contended by the learned Senior Federal Counsel, appearing on behalf of the second respondent that as there was non-compliance by the petitioner with regulation 7 (1) (b) as has been held by the returning officer, section 32(b) of the Election Offences Ordinance, 1954, (No. 9 of 1954) cannot be made as a ground for the petition and that the decision of the returning officer should be treated as final in view of sub-regulation (5) of regulation 7 of the Regulations.

Sub-regulation (5) of regulation 7 of the Regulations reads as follows:—

"(5) The decision of the returning officer shall be final and conclusive for the purposes of the election in respect of which the proceedings are being held, and shall not be called in question in any court;

Provided that any person aggrieved by the decision of the returning officer may present an election petition in respect thereof on the grounds set out in paragraph (b) of section 32 of the Election Offences Ordinance, 1954, and the provisions of the said Ordinance shall take effect accordingly."

I doubt very much the efficacy of this provision in excluding the powers of the court to enquire into the correctness of a decision of the returning officer. The necessity of having this provision at all in its present form, in my view, is questionable. It is clear that section 16 of the Elections Ordinance, 1958 (No. 33 of 1958) merely gives the Commission power generally to make regulations for the conduct of elections and particularly to prescribe procedural matters relating thereto. It is hard to accept that such power may be construed as enabling the Commission to exclude the revisionary powers of the court. The provisions of the sub-regulation, as I see it, might as well read that any person aggrieved by the decision of the returning officer may present a petition on the grounds set out in paragraph (b) of section 32 of the Election Offences Ordinance, 1954.

By paragraph (b) of section 32 of the Election Offences Ordinance, 1954 the election of a candidate at any election shall be declared to be void on an election petition on the ground mentioned therein which may be proved to the satisfaction of the Election Judge, namely, non-compliance with the provisions of any written law relating to any election, if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election.

The question for determination by the court can therefore be put in different words so as to bring it in consonance with the above provisions i.e. whether the decision of the returning officer in rejecting the nomination paper amounts to a non-compliance on his part with the law relating to election.

On the question in issue one of the main requirements of the Regulations as indicated above is that the candidate must consent to the nomination. The candidate did consent. He affixed his signature which was attested in the manner and on the spot as set out in the Form.

Regulation 28 of the Regulations provides that no misnomer or inaccurate description of any person or place named or described in any notice or other document whatsoever prepared or issued under or for the purposes of these Regulations shall in any wise affect the operation of these Regulations as respects that person or place if that person or place is so designated in such notice or document as to be identifiable.

There is no suggestion in this case that the omission to fill in the name of the petitioner on the dotted line in the attestation clause amounts to a misnomer or an inaccurate description. It is not even disputed that the person referred to in the form is other than the petitioner. What is contended in effect is that the form must be faithfully followed and any omission, however slight, is a non-compliance of the Regulations rendering the nomination void.

Section 7 of the Interpretation and General Clauses Ordinance, 1948, provides that save as otherwise expressly provided, wherever forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead shall not invalidate them.

There is no express provision in the Regulations requiring that in completing a form prescribed thereby there can be no deviation.

As far as I can see the effect of these two provisions is that an omission should not be regarded as a non-compliance with the Regulations unless it amounts to a misnomer or an inaccurate description within the meaning of regulation 28 or unless it affects the substance or is calculated to mislead. As a matter of general guidance, a returning officer should not insist upon absolute accuracy in completing a nomination paper but there must be substantial compliance with the material requirements of the Regulations, particularly with those regarding description or particulars which are to be given in the nomination paper.

It is therefore clear that the returning officer did not have regard to these two provisions in arriving at his decision. It should have been obvious that in the form as completed the omission is utterly inconsequential. Indeed to insert the name in the clause is to state the obvious. In my judgment, therefore, the returning officer erred in his decision. Although Parliament has now been dissolved and the first respondent is no longer a member of that august body, there seems to be nothing to prevent this determination from being made.

In accordance with section 36 of the Election Offences Ordinance, 1954, I therefore determine that the election of the first respondent was void. In view of section 37 of the Ordinance, I shall also report to the Election Commission that no corrupt or illegal practice has been proved to have been committed.

The petition is allowed with costs.

Petition allowed.

Solicitors: *V. Veerappan & Co.*; *Ten Chin Yong.*

PUBLIC PROSECUTOR v. CHANG HUI PAT

[A.Cr.J. (Ibrahim J.) March 27, 1969]
[Malacca — Criminal Appeal No. 36 of 1968]

Road Traffic — Construction and use of vehicle — Vehicle emitting smoke — Likely to cause annoyance to any person — Whether there must be a complaint by a specific person — Motor Vehicles (Construction and Use) Rules, 1959, r. 107 and Road Traffic Ordinance, 1958, s. 146(1)(d).

The respondent was acquitted and discharged at the close of the prosecution case on the following charge: "That you on 29.4.67 at about 10.00 a.m. at 4½ m.s. Jalan Malim, Melaka, in the State of Melaka, being the driver of a motor car taxi No. MA 2211, did use the said vehicle on the road emitting smoke, the emission of which was likely to cause annoyance to any person, and that you have thereby committed an offence under rule 107 of the Motor Vehicles (Construction & Use) Rules, 1959, and punishable under section 146 (1)(d) of the Road Traffic Ordinance, 1958."

The learned magistrate held the view that for this offence to be committed there must be a complaint by a specific person that the smoke emitted was likely to cause annoyance to him and in this case the prosecution had not produced such a person.